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RE: Joint Powers Authority as Applicant Under the Library Bond Act

Dear Mr. Smith:

This letter provides an informal opinion regarding whether or not a joint powers authority (JPA) may be an applicant for funds under the California Public Library Construction and Renovation Bond Act of 2000 (Library Bond Act or Bond Act).

ISSUE PRESENTED

The State Librarian has posed the following questions. "Can a JPA be an applicant for Library Bond Act funds? If yes, do all parties in a JPA application have to be either a 'city, county, city and county, or district that is authorized at the time of the project application to own and maintain a public library facility?'"

SHORT ANSWER

No, a JPA is not a proper applicant under the Library Act. Since a JPA is not a proper applicant, there is no need to answer the second question regarding JPA membership.

BACKGROUND

The Bond Act and Proper Applicants

The Library Bond Act provides for the issuance of State of California General Obligation Bonds in the amount of $350 million.[1] The money raised pursuant to the Act is intended to provide grants to cities, counties, a city and county, or districts that are authorized to own and maintain a public library facility at the time they submit their project application.[2] Once formed a JPA is a separate legal entity from its constituent members[3] and is neither a city, county, a city and county. Therefore, in order for a JPA to be a proper applicant, it would have to be a district authorized to own and maintain a public library facility.

Districts

Black's Law Dictionary defines "district" as: "[o]ne of the territorial areas into which an entire state or country, county municipality or other political subdivision is divided for judicial, political, electoral, or administrative purposes."[4] "District " or "special district " is defined by statute as an agency of the state, "formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries."[5]

Districts,[6] barring certain inapplicable exceptions, are created pursuant to Title 5, Division 3, of the Government Code.[7] This Division requires that in order to form, reorganize, or dissolve a district the applicable Local Agency Formation Commission must hold certain proceedings and take certain actions. Thus, in general, districts may not unilaterally create, alter, nor destroy themselves nor be created, altered nor destroyed by other general local public agencies.

Additionally, there are statutory requirements in dealing with outstanding debt when a district is dissolved.[8] For example, a successor entity is named for the purpose of winding up the dissolved district's affairs.[9] Additionally, the successor's ability to ignore certain obligations is limited. The successor is required to continue to levy tax assessments in order to pay any outstanding

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[1] Ed. Code § 20000.

[2] Ed. Code §19988.

[3] See Gov. Code § 6503.5; *Rider* v. *City of San Diego* (1998) 18 Cal. 4th 1035, 1044.

[4] Blacks Law Dictionary 476 (1990) 6th Ed.

[5] Gov. Code § 56036.

[6] As reference herein, districts refer to "Special Districts" and not to districts set up exclusively established by the State such as Agricultural Districts and Fair Districts.

[7] Gov. Code § 56100.

[8] Title 5, Div. 3, Ch. 6 (Gov. Code § 57450 et seq.).

[9] Gov. Code § 57451.

long-term obligations,[10] and is required to maintain revenue producing enterprises to pay for obligations including contracts, and revenue bonds.[11] Lastly, any property of a dissolved district which was impressed with any public trust continues to be so impressed until terminated in the manner provided by law.[12]

JPAs

A JPA[13] is a creature of state statute which comes into existence when two or more public agencies, authorized by their legislative or other governing bodies, enter an agreement to jointly exercise any power common to the contracting parties.[14] A JPA can be created as a separate legal entity from the contracting parties with the ability to contract and sue in its own name.[15] The statute authorizing the creation of a JPA defines it as a "public agency"[16] and the JPA Act never refers to a JPA as a district,[17] but instead refers to a JPA as a "public entity," "commission," or "board."[18]

A JPA does not need any external approval or vote of the people to be created, changed, or destroyed.[19] Changes in membership, duties, powers, liabilities or structure to the JPA may be made by members through a simple amendment to the agreement.[20] This agreement can state that on a certain date the JPA will cease to be, or that after certain acts or events the JPA will disband. Thus, unlike a district, the JPA and its constituent members completely control the creation, alteration, and dissolution of the JPA.

An important aspect of a JPA is that the debts and obligations of a JPA need not be the debts and obligations of the JPA's constituent members.[21] The only obligation of the JPA is to set up a

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[10] Gov. Code § 57458.

[11] Gov. Code §§ 57459, 57461.

[12] Gov. Code § 57462.

[13] For the purpose of this memo and unless otherwise indicated, the term "JPA" includes both a Joint Powers Authority or Joint Powers Agency and any other public entity constituted under Gov. Code § 6500 et seq.

[14] Gov. Code § 6502.

[15] *Id.*

[16] Gov. Code § 6500.

[17] Gov. Code § 6500 et seq.

[18] See, for example, Gov. Code §§ 6502, 6508, 6508.1, and 6515.

[19] See *Rider* v. *San Diego* (1998) 18 Cal. 4th 1035, 1043.

[20] Gov. Code §§ 6503.5, 6512.

[21] Gov. Code § 6508.1.

distribution system for the proceeds and assets upon dissolution.[22] There is no corresponding statutory obligation to distribute the debts and obligations of the JPA upon dissolution. Additionally, a JPA does not need to obtain voter approval before incurring debt.[23]

One final attribute is that the Supreme Court has found that unlike a district a JPA has no geographic location or boundary.[24]

Treatment of Districts and JPAs in California Statutes

Often the terms "public agency," "local agency" or other specific terms, are defined to include both a JPA and a district. In fact this is done more than 20 times throughout the California Codes.[25] For example in the JPA Act a "public agency" is defined to include both a district and a JPA.[26] Also, some types of authorities include "district" within the statute which defines the "authority."[27] However, no definition for "district" that includes a "joint powers authority" could be found in the annotated codes. Thus, there are legislative schemes in which districts and authorities are included together under a broader definition, and some where districts can make up or be part of an "authority" but there are no situations in which a "district" has been defined to mean a "joint powers authority" or an "authority."

ANALYSIS

As discussed above, the Library Bond Act permits applications for grants to be received from a "city, county, city and county, or district that is authorized at the time of the project application to own and maintain a public library facility."[28] Since a JPA is not a city, county, or city and county, the only way a JPA could qualify as an applicant is if it is a district that is authorized at the time of the project application to own and maintain a public library facility. However, a JPA is not a district as JPAs and districts are different types of local public agencies. Therefore, a JPA is not a proper applicant under the Library Bond Act.

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[22] Gov. Code §§ 6511-6512.2.

[23] *Rider v. San Diego* (supra) at 1042.

[24] *Rider* v. *San Diego* (1998) 18 Cal. 4th 1035, 1044.

[25] See, for example, Gov. Code §§ 6599.02, 53690; Hlth. & Safety Code § 116760.20; Pub. Res. Code §§ 37002, 44016; Water Code §§ 13452, 14004, and 78640.

[26] Gov. Code § 6500.

[27] See Ed. Code § 10901 "'public authority' means any city of any class, city and county, county of any class, public corporation or district having powers to provide recreation, or school district in the state."

[28] Ed. Code § 19988.

One clear indication that a JPA and a district are not equivalent entities is how the formation process is different for the two entities. In one, the formation of a JPA, two or more agencies pass resolutions and enter into a contract. However, with the formation of a district a more formal process takes place and approval must be obtained from the Local Agency Formation Commission and possibly the voters. Additionally, with the exception of specific authorities, JPAs do not have geographic boundaries whereas districts clearly do.

Another indication that the two entities are different is the disparate treatment of the two under other California statutes. Simply, there is no indication that any statutory scheme has ever equated a JPA with a district. The definitions for the entities are different, and the statutory requirements of the entities do not match. The Legislature has dealt with and used the terms "district" and "joint powers authority" on numerous occasions. It is clear that the Legislature knows how to use these terms and that it uses both "district" and "JPA" selectively. However, at no point has the Legislature ever included the term "joint powers authority" within the definition of a "district."

It is plainly evident that the Legislature knows how to, and does, define various types of public entities that are to be included under a particular act; however, in the Library Act the Legislature did not include "joint powers authority" or any "authority" as a possible applicant. Thus while under certain schemes the Legislature will state that "public entity" means "a city a county, and JPA, a district . . . "[29] the Legislature chose not to give a similarly broad definition to the term "district" found in the Library Act. Since it did not do so, the term, "district," should be used in its normal and ordinary meaning.[30] Typically, statutory language is interpreted according to the ordinary and popular sense of the words chosen by the Legislature.[31] A review of both the dictionary definitions and the statutes show that "district" and "JPA" do not have the same meaning and that under no circumstance is a JPA considered a district under California law.

Furthermore, the exclusion of JPAs from the list of appropriate applicants may have been based on valid policy considerations. For example, the accountability of JPAs and that of cities, counties, cities/counties, and districts is quite different. Additionally, the durability, and thus in some sense the reliability of a JPA may be much less than other forms of local government. For illustration, a JPA made up entirely of cities could apply for and accept funds but disband prior to fulfilling the obligations of the receipt of funds. In such a case the cities making up the JPA may not be liable and the grantor of the money would have a difficult time recouping the grant. However, an individual city could not so easily abandon its legal obligations. Therefore, given some of the practical and legal ramifications of granting money to different types of local agencies the Legislature's exclusion of JPAs from the list of qualified applicants is legally rational and must be viewed as intentional.

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[29] See Civ. Proc. §§ 481.200, 511.100, and 1095.

[30] When interpreting a statute, if the language is clear, the plain meaning is followed. *Great Lakes Properties, Inc.* v. *City of El Segundo* (1977) 19 Cal.3d 152, 155.

[31] *People* v. *Eddy* (1872) 43 Cal. 331, 336- 337; see also *In re Rojas* (1979) 23 Cal.3d 152, 155.

In fact, there is absolutely no indication that the Legislature had any intent of treating the two entities as the same under the Library Act. Under the Act, only certain types of specifically enumerated entities are permitted to be applicant and there is nothing in the Library Act or other law that suggest that the Legislature meant anything more or less than what it wrote.

CONCLUSION

Since a JPA is not a "district" there is no statutory basis for a JPA to be an applicant under the Bond Act. Since there is no statutory basis, a JPA is not a proper applicant for funds under the Library Bond Act.[32]

If you have any questions, or would like to discuss this further, please call me at (916) 445-6998.

Sincerely,

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Deputy Attorney General

For BILL LOCKYER
Attorney General

[32] Please note, this does not mean that the members of a JPA are not proper applicants.